

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,)	
)	
and)	
)	
STATE OF NEW YORK,)	
)	
	<i>Plaintiffs,</i>)
v.)	Civil Action No.
)	12-cv-8989 (ALC) (GWG)
)	
TWIN AMERICA, LLC, et al.)	ECF CASE
)	
	<i>Defendants.</i>)
)	

JOINT MOTION TO REOPEN LIMITED DISCOVERY

Plaintiffs United States of America and State of New York (collectively, “Plaintiffs”) and Defendants Coach USA, Inc. and International Bus Services, Inc. (collectively, the “Coach Defendants”) move this Court to reopen discovery for the limited purpose of discovering whether the Coach Defendants have properly preserved evidence in this case and provided all non-privileged documents and information responsive to the Plaintiffs’ discovery requests.

1. Defendants Twin America, LLC, CitySights LLC, and City Sights Twin, LLC (collectively, “Twin Defendants”) do not oppose this motion.
2. On April 28, 2014, the Court received an anonymous email (the “Anonymous Email”) sent to Judge Carter’s email address. Later that day, Judge Gorenstein’s chambers forwarded the Anonymous Email to all counsel of record for Plaintiffs and Defendants, with the instruction that Judge Gorenstein was “not directing the parties to take any specific action with

respect to this email but is instead leaving such action up to each party's judgment."

3. In the course of a preliminary investigation of the allegations in the Anonymous Email, Plaintiffs received materials from a non-party that appear to be from the Coach Defendants. These materials, taken together with the allegations in the Anonymous Email, raise questions about whether there is relevant information that was not previously disclosed or produced during discovery and whether document preservation obligations were met.

4. In light of these developments, Plaintiffs and the Coach Defendants seek to reopen discovery for the limited purpose of investigating the allegations in the Anonymous Email, including whether relevant information has not been produced.

5. A district court has "broad discretion to direct and manage the pre-trial discovery process." *Wills v. Amerada Hess Corp.*, 379 F.3d 32, 41 (2d Cir. 2004). Fact discovery may be reopened upon a showing of good cause. *Lopez v. Ramos*, No. 11-cv-007790 (NSR), 2013 WL 6912692, *2-3 (S.D.N.Y. Dec. 30, 2013). Factors relevant to a determination of good cause include the diligence of the moving party and whether the request is opposed. *Id.* Where new information indicates that a party might have failed to produce responsive documents prior to the close of discovery, courts have reopened discovery to permit exploration of whether and when non-production of documents occurred. *See, e.g., Kelly v. Wright Medical Technology, Inc.*, No. 00-Civ.-8808-LAK, 2003 WL 40473, *1 (S.D.N.Y. Jan. 3, 2003) (reopening discovery to allow plaintiff to take a 30(b)(6) deposition to determine whether defendant possessed and failed to produce responsive documents).

6. At this time, the parties do not seek an adjustment to the current schedule. The parties propose to advise the Court of the parties' progress in completing this limited discovery

by June 30, 2014.

7. A Proposed Order Granting the Joint Motion to Reopen Discovery is attached hereto as Attachment 1.

Dated: May 29, 2014

Respectfully submitted,

/s

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the Joint Motion to Reopen Limited Discovery, and all attachments hereto, to be served via the Court's ECF System upon the following Parties:

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